United Nations S/2005/258

Security Council

Distr.: General
19 April 2005

Original: English

Letter dated 18 April 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 23 February 2005 (S/2005/116). The Counter-Terrorism Committee has received the attached fifth report from Guatemala submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

05-31551 (E) 030505 110505

Annex

[Original: Spanish]

Letter dated 15 April 2005 from the Permanent Representative of Guatemala to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I am writing in response to the letter from your predecessor, Mr. Andrey I. Denisov, dated 19 January 2005 concerning the questions and comments made on the supplementary report submitted by the Government of Guatemala in accordance with paragraph 6 of Security Council resolution 1373 (2001). In this regard, I am pleased to transmit to your Committee the fifth report on measures taken by the Government of Guatemala in order to fulfil the commitments made in the aforementioned resolution (see enclosure).

(*Signed*) Jorge **Skinner-Klée**
Ambassador
Permanent Representative

Enclosure

[Original: Spanish]

Fifth report of Guatemala pursuant to Security Council resolution 1373 (2001)

1. Implementation measures

Effective protection of the financial system

1.1 The CTC would be grateful to receive a progress report on the following:

- **The passage and enactment of the draft Act for the prevention and suppression of the financing of terrorism which was introduced in the Plenary of the Congress in April 2003**

Reply of the Government of Guatemala

The draft Act for the prevention and suppression of the financing of terrorism — Legislative Proposal No. 2839 from the Legislative Directorate — has not yet been approved by the Congress of the Republic. It was, however, the subject of a favourable opinion (No. 11-2004 of 8 October 2004) from the Public Finance and Currency Committee and has been submitted to the Plenary of the Congress of the Republic for discussion and approval.

- **The passage and enactment of the draft Anti-Terrorism Act, which is still being processed by the Ministry of Foreign Affairs and has yet to be submitted to the legislature**

Reply of the Government of Guatemala

The draft Anti-Terrorism Act drawn up by the Multi-Disciplinary Committee, which is coordinated by the Ministry of Foreign Affairs, is still being discussed within the Ministry, before being submitted to the legislature.

- **Guatemala becoming a party to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf**

Reply of the Government of Guatemala

As part of their ratification process, the General Secretariat of the Office of the President has submitted the Convention and the Protocol to the Congress of the Republic for adoption.

1.2 Subparagraph 1 (c) of the resolution requires States to freeze without delay the funds or other economic resources of persons or entities who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. In its second report, Guatemala indicated that the freezing of funds is done by a judge at the request of the Office of the Public Prosecutor. A judge or court, however, must confirm such an order, immediately. The CTC would appreciate receiving an indication of whether Guatemalan authorities are empowered to freeze assets of persons and entities involved in terrorist acts at the request of another State.

Reply of the Government of Guatemala

Article 11 of the Act against the Laundering of Money or Other Assets, Decree No. 67-2001, provides as follows: "Precautionary measures. The trial judge or court may order at any time, without prior notice or hearing, any precautionary or security measure established by law to ensure the continued availability of the property, product or instruments proceeding from or related to the offence of laundering money or other assets, when the Office of the Public Prosecutor so requests. Such request shall be considered and decided upon by the judge or court immediately." Any request must therefore be made through the Office of the Public Prosecutor.

Effectiveness of customs, border and immigration controls

1.3 Effective implementation of subparagraphs 2 (c) and 2 (g) of the resolution requires the operation of efficient customs and border controls to prevent and suppress the financing of terrorist acts as well as the movement of terrorists. In this regard, does Guatemala impose restrictions or controls on the cross-border movement of cash, negotiable instruments, precious stones and metals?

Reply of the Government of Guatemala

Controls on the movement of cash and negotiable instruments are regulated by the Act against the Laundering of Money or Other Assets, Decree No. 67-2001, as follows:

> "Article 25. Declaration. Any natural or legal person of Guatemalan or foreign nationality who, acting alone or through an intermediary, moves cash or negotiable instruments in excess of ten thousand United States dollars, or their equivalent in national currency, out of or into the Republic shall report such movement at the point of departure from, or entry into, the country using the forms which the Special Audit Office has designed for that purpose.
>
> "The competent authority shall verify the information provided on the sworn declaration contained on the form referred to in the previous paragraph. If there is an omission or false information on the declaration, the money or instruments concerned shall be confiscated or handed over to the authorities for a criminal investigation."

Precious stones and metals are subject to the same customs procedures as all goods in accordance with the customs clearance procedures established in the Central American Uniform Customs Code (CAUCA) and its regulation (RECAUCA).

1.4 Effective implementation of subparagraphs 2 (c) and 2 (g) of the resolution also requires the operation of efficient customs, immigration and border controls to prevent the movement of terrorists and the establishment of safe havens. In this regard, please outline the legal and administrative procedures developed by Guatemala to protect port facilities, aircraft, cargo transport units and ships' stores from the risks of terrorist attacks.

Reply of the Government of Guatemala

1. In accordance with the guidelines (State commitments) of the Conference of States parties to the International Convention for the Safety of Life at Sea (SOLAS) and the general provision of the International Code for the Security of Ships and of Port Facilities (ISPS Code), the Government of the Republic of Guatemala requires the port facilities within its territory to implement security plans, adopt entry control measures, build security infrastructures and install equipment to ensure the safety of persons, goods and external trade operations by:

(a) Carrying out a security assessment;

(b) Designating a Port Facility Security Officer (PFSO);

(c) Drawing up a security plan;

(d) Building infrastructure and installing security equipment;

(e) Approving the security plan;

(f) Implementing the security plan (training, drills and exercises).

To that end, the National Port Commission, as the designated authority for implementing the ISPS Code, set up a working group with the following national institutions that specialize in various aspects of security:

- The Office of the Inter-Agency Security Coordinator;
- The Maritime Department of the Ministry of National Defence;
- The Anti-Bomb Unit of the National Defence General Staff;
- The Operations Service of the National Civil Police;
- The Bomb Disposal Service of the National Civil Police;
- The Head of Security in each port;
- The Harbour Master's Office;
- The Anti-Drug Unit (SAIA);
- The Technical Advisory Office of the Port Security Programme (PSP).

As part of the ISPS Code implementation process, the following steps have been taken:

A. In line with regulation XI-2/13 of the SOLAS Convention, the Ministry of Foreign Affairs notified the International Maritime Organization (IMO) that Guatemala's three main ports — Santo Tomás de Castilla and Puerto Barrios on the Caribbean coast and Puerto Quetzal on the Pacific coast — had been issued with a Statement of Compliance and that a Port Facility Security Officer (PFSO) had been designated in each port. IMO

was also notified about Puerto Quetzal's three solid bulk warehouses and one liquefied gas warehouse, all of which are operated by private companies at Puerto Quetzal's docks, and about the four liquid bulk warehouses (three for hydrocarbons and one for molasses) at Puerto de San José, which has a system of buoys owing to operations within the ship/port interface.

B. Guatemala also authorized 33 companies providing port services to operate where a statement of compliance has already been issued: 14 in Puerto Quetzal and 19 in Santo Tomás de Castilla and Puerto Barrios, where there is no ship/port interface.

As part of the security plans, consideration was also given to building perimeter walls and/or fences around those port facility buildings and specialized warehouses without one and to contingency plans, evacuation procedures and training in aspects of security and protection, in line with the Maritime Transportation Security Act of the United States of America.

On 1 October 2004, the official notification process concerning port facilities was completed when the Ministry of Foreign Affairs submitted its official communication to IMO, thereby ensuring that Guatemalan ports and port facilities comply with international protection and security requirements and making it possible to require ships that enter its jurisdictional and sovereign waters, dock at its ports or use its warehouses to comply with the same regulations.

2. As for border controls, it should be pointed out that, in line with the Superintendency Tax Administration (SAT) Organization Act contained in Decree No. 1-98 of the Congress of the Republic, the Tax Administration is responsible for administering Guatemala's customs system in line with the Central American Uniform Customs Code (CAUCA) and its regulation (RECAUCA).

The Tax Administration has worked with representatives of port enterprises on the issue of certification of ports. Such certification was received on 21 June 2004. At the request of port enterprises, the following points were dealt with:

- Construction of a perimeter fence at the Santo Tomás de Castilla customs building;
- Development of standards and procedures relating to rules for access to and exit from buildings occupied by the Tax Administration;
- Development of contingency and evacuation plans and procedures;
- Development of health and safety rules and installation of the necessary equipment (extinguishers, signalling of evacuation routes, smoke detectors, and masks for staff who may come into contact with dangerous goods);
- Training in aspects of industrial safety and first aid for maritime customs personnel.

The Tax Administration also takes part in the evaluation and follow-up of measures implemented in areas under its authority.

Controls to prevent the supply of weapons to terrorists

1.5 **Effective implementation of subparagraph 2 (a) of the resolution requires States, inter alia, to eliminate the supply of weapons to terrorists. Guatemala stated in its third report that the draft amendments to Decree-Law 39-89 on arms control are still being processed by the legislature, and that moves are under way to improve the control provisions of the amendments. The CTC would be grateful to have an outline of the draft amendments to Decree 39-89 and a progress report on its enactment.**

Reply of the Government of Guatemala

The amendments to Decree-Law 39-89, the Arms and Ammunition Act, are aimed at improving controls relating to illicit trafficking in and illegal possession of firearms ammunition, illegal bearing of explosives, chemical, biological and nuclear weapons and experimental weapons, and the stockpiling of and illegal trade in firearms and ammunition.

The aforementioned draft amendments to Decree-Law 39-89 are currently being considered by the Government Commission of the Congress of the Republic before being discussed by the legislature in plenary session.

2. Assistance and guidance

The Government of Guatemala acknowledges current international efforts to combat international terrorism and reaffirms its political will to comply with the provisions of the resolution. It therefore reiterates its request for assistance from the CTC in the following areas:

- Counter-terrorism legislation
- Financial law and practice
- Immigration law and practice
- Extradition law and practice
- Customs law and practice
- Police work and maintenance of law and order
- Arms trafficking controls